

215.305

(iii) See 247.573–2(c) for additional evaluation factors required in solicitations for the direct purchase of ocean transportation services.

[71 FR 3414, Jan. 23, 2006, as amended at 71 FR 14109, Mar. 21, 2006; 72 FR 49205, Aug. 28, 2007]

215.305 Proposal evaluation.

(a)(2) *Past performance evaluation.* When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219–8, Utilization of Small Business Concerns, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219–9, Small Business Subcontracting Plan, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause.

[71 FR 3414, Jan. 23, 2006]

215.370 Evaluation factor for employing or subcontracting with members of the Selected Reserve.

215.370–1 Definition.

Selected Reserve, as used in this section, is defined in the provision at 252.215–7005, Evaluation Factor for Employing or Subcontracting with Members of the Selected Reserve.

[73 FR 62211, Oct. 20, 2008]

215.370–2 Evaluation factor.

In accordance with Section 819 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163), the contracting officer may use an evaluation factor that considers whether an offeror intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve. See PGI 215.370–2 for guidance on use of this evaluation factor.

[73 FR 62211, Oct. 20, 2008]

215.370–3 Solicitation provision and contract clause.

(a) Use the provision at 252.215–7005, Evaluation Factor for Employing or

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Subcontracting with Members of the Selected Reserve, in solicitations that include an evaluation factor considering whether an offeror intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve.

(b) Use the clause at 252.215–7006, Use of Employees or Individual Subcontractors Who are Members of the Selected Reserve, in solicitations that include the provision at 252.215–7005. Include the clause in the resultant contract only if the contractor stated in its proposal that it intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve, and that statement was used as an evaluation factor in the award decision.

[73 FR 62211, Oct. 20, 2008]

Subpart 215.4—Contract Pricing

215.402 Pricing policy.

Follow the procedures at PGI 215.402 when conducting cost or price analysis, particularly with regard to acquisitions for sole source commercial items.

[72 FR 30278, May 31, 2007]

215.403 Obtaining cost or price data.

215.403–1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(b) *Exceptions to cost or pricing data requirements.* Follow the procedures at PGI 215.403–1(b).

(c) *Standards for exceptions from cost or pricing data requirements—*(1) *Adequate price competition.* For acquisitions under dual or multiple source programs:

(A) The determination of adequate price competition must be made on a case-by-case basis. Even when adequate price competition exists, in certain cases it may be appropriate to obtain additional information to assist in price analysis.

(B) Adequate price competition normally exists when—

(i) Prices are solicited across a full range of step quantities, normally including a 0–100 percent split, from at least two offerors that are individually

capable of producing the full quantity; and

(ii) The reasonableness of all prices awarded is clearly established on the basis of price analysis (see FAR 15.404-1(b)).

(3) *Commercial items.* (A) Follow the procedures at PGI 215.403-1(c)(3)(A) for pricing commercial items.

(B) By November 30th of each year, departments and agencies shall provide a report to the Director, Defense Procurement and Acquisition Policy (DPAP), ATTN: DPAP/CPF, of all contracting officer determinations that commercial item exceptions apply under FAR 15.403-1(b)(3), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of \$15,000,000 or more. See PGI 215.403-1(c)(3)(B) for the format and guidance for the report. The Director, DPAP, will submit a consolidated report to the congressional defense committees.

(4) *Waivers.* (A) The head of the contracting activity may, without power of delegation, apply the exceptional circumstances authority when a determination is made that—

(1) The property or services cannot reasonably be obtained under the contract, subcontract, or modification, without the granting of the waiver;

(2) The price can be determined to be fair and reasonable without the submission of certified cost or pricing data; and

(3) There are demonstrated benefits to granting the waiver. Follow the procedures at PGI 215.403-1(c)(4)(A) for determining when an exceptional case waiver is appropriate, for approval of such waivers, for partial waivers, and for waivers applicable to unpriced supplies or services.

(B) By November 30th of each year, departments and agencies shall provide a report to the Director, DPAP, ATTN: DPAP/CPF, of all waivers granted under FAR 15.403-1(b)(4), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of \$15,000,000 or more. See PGI 215.403-1(c)(4)(B) for the format and guidance for the report. The Director, DPAP, will submit a consolidated report to the congressional defense committees.

(C) DoD has waived the requirement for submission of cost or pricing data for the Canadian Commercial Corporation and its subcontractors.

(D) DoD has waived cost or pricing data requirements for nonprofit organizations (including education institutions) on cost-reimbursement-no-fee contracts. The contracting officer shall require—

(1) Submission of information other than cost or pricing data to the extent necessary to determine reasonableness and cost realism; and

(2) Cost or pricing data from subcontractors that are not nonprofit organizations when the subcontractor's proposal exceeds the cost or pricing data threshold at FAR 15.403-4(a)(1).

[63 FR 55040, Oct. 14, 1998, as amended at 71 FR 69493, Dec. 1, 2006; 72 FR 30278, May 31, 2007]

215.403-3 Requiring information other than cost or pricing data.

Follow the procedures at PGI 215.403-3.

[72 FR 30278, May 31, 2007]

215.403-5 Instructions for submission of cost or pricing data or information other than cost or pricing data.

When the solicitation requires contractor compliance with the Contractor Cost Data Reporting System, follow the procedures at PGI 215.403-5.

[71 FR 69494, Dec. 1, 2006]

215.404 Proposal analysis.

215.404-1 Proposal analysis techniques.

(1) Follow the procedures at PGI 215.404-1 for proposal analysis.

(2) For spare parts or support equipment, perform an analysis of—

(i) Those line items where the proposed price exceeds by 25 percent or more the lowest price the Government has paid within the most recent 12-month period based on reasonably available information;

(ii) Those line items where a comparison of the item description and the proposal price indicates a potential for overpricing;